In the case before us both the appellants are first offenders, and they appealed against their convictions and sentences. Their appeals were dismissed and the sentences maintained. In dismissing this appeal we wish it to be known that we do not agree with the principle stated in the case of *Chua Boon Hean v. Regina* (*supra*) in assessing the sentences of first offenders.

In our view no sentence can be assessed by a simple mathematical formula. Many factors must be taken into account according to the circumstances of each individual case. In that respect we would draw attention to the matters which should be taken into account in fixing punishments as set out in *Halsbury's* Laws of England (*Hailsham* Edition) volume 9, para 365 :—

> The Court, in fixing the punishment for any particular crime, will take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, the provocation which he has received, if the crime is one of violence, the antecedents of the prisoner up to the time of sentence, his age and character.

Appeal Dismissed.

DE ALWIS v. DE ALWIS.

[Orig. Civil Juris. (Willan, C.J.) July 5, 1947]

International Law — Validity of marriage solemnised under Christian Marriage Enactment during Japanese occupation of Malaya.

This was a suit by the petitioner (wife) for the dissolution of her marriage on the ground that the respondent (husband) had been guilty of adultery. To prove the marriage the petitioner put in evidence the certificate of her marriage with the respondent. That certificate disclosed that the marriage of the petitioner and the respondent was solemnised in Kuala Lumpur on the 29th day of October 2604 (1944) before the Registrar of Civil Marriages for the State of Selangor. This raised the question as to whether the marriage, which took place during the Japanese occupation was valid.

Held, that since the act of the Japanese authorities in appointing a Marriage Registrar for the State of Selangor was an act which it was within their competence to do and which was done in accordance with the existing law, and since the marriage in this case was solemnised in accordance with the provisions of the Christian Marriage Enactment, such marriage was a valid marriage at the time it was solemnised and remained valid after the re-occupation of Malaya.

DIVORCE SUIT.

Rajasooria for the Petitioner.

Respondent Absent,

Willan, C. J. : — This is a suit by the petitioner (wife) for the dissolution of her marriage on the ground that the respondent (husband) has been guilty of adultery.

On the trial of all matrimonial causes the first step is to prove the marriage and, in accordance with the usual practice, the petitioner put in evidence the certificate of her marriage with the respondent. That certificate discloses that the marriage of the petitioner and the respondent was solemnised in Kuala Lumpur on the 29th day of October, 2604 (1944) before the Registrar of Civil Marriages for the State of Selangor.

Since the marriage took place during the Japanese occupation, this immediately raised the question as to whether the marriage is valid and, after hearing evidence and arguments by counsel for the petitioner on this question (the respondent, though served with the notice of hearing, being absent) I adjourned this suit until to-day to give judgment on that preliminary matter.

By virtue of Part VI of the Christian Marriage Enactment (Cap. 109) of the Federated Malay States, Christian marriages may be solemnised by a Marriage Registrar. Marriage Registrars are appointed by the Residents of States, under the provisions of section 6 of that Enactment, the relevant portion of which is as follows :—

> The Resident of any State may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for such State or for any place therein and may revoke any such appointment.

On the question of the validity of this particular marriage I heard the evidence of Mr. P. Samuel, Assistant Registrar, Supreme Court, who was appointed Marriage Registrar for the State of Selangor during the Japanese occupation, and also the evidence of Mr. K. K. Benjamin, an Advocate and Solicitor of the Supreme Court, who, during the Japanese occupation, was appointed by the Japanese Authorities Legal Adviser and Judge for the State of Selangor.

The evidence of Mr. Benjamin is that during the first half of the year 1942 it came to his notice that there were a number of persons in Selangor who wished to get married before a Marriage Registrar under the provisions of the Christian Marriage Enactment to which I have already referred. He thereupon suggested to the Japanese Governor of the State of Selangor that Mr. Samuel should be appointed Marriage Registrar for that State. The Japanese Governor having concurred, this appointment was published in the Malay Mail (New Order) on the 26th day of May, 2602 (1942), as a Government Notice. That Government Notice reads as follows :—

> NOTICE UNDER THE CHRISTIAN MARRIAGE ENACTMENT.
>
> Mr. P. Samuel, Registrar, Supreme Court, Kuala Lumpur, has in addition to his own duties, been

appointed Marriage Registrar for the State of Selangor with effect from 20th May, 2602.

20th May 2602.

THE SELANGOR ADMINISTRATION.

Mr. Benjamin gave further evidence that the Malay Mail (New Order) was the medium by means of which the Japanese Authorities brought official communications to the notice of the public, and that publication of official notifications herein was equivalent to notifications being published in the present Government Gazette.

Mr. Samuel's evidence is that he was appointed Registrar of Christian Marriages for the State of Selangor with effect from the 20th day of May, 1942, and continued in that appointment until Malaya was liberated by the British Forces in September, 1945. Accordingly, when he solemnised this particular marriage on the 29th day of October, 1942, he was Registrar of Christian Marriages appointed by the Japanese Governor of the State of Selangor. Mr. Samuel, being a Christian, fulfils the qualification prescribed by section 6 set out above.

He further gave evidence that in this particular marriage, and in all other marriages solemnised by him, he followed the procedure prescribed by the Christian Marriage Enactment in exactly the same way as it was followed with regard to marriages which took place prior to the Japanese occupation.

Turning now to International Law, Article 43 of the Hague Regulations respecting the Laws and Customs of War on Land is as follows :—

> The authority of the legitimate Power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Thus, subject to the over-riding power vested in an occupant to take all steps necessary for the maintenance and safety of his army and for the realisation of the purpose of war, the occupying power has the duty of administering an occupied country according to the laws as they existed immediately prior to the occupation.

In this particular case I am satisfied that the Japanese Authorities respected the provisions of the Christian Marriage Enactment in the State of Selangor by virtue of the Japanese Governor of that State — he was the official of the occupying Power equivalent to the Resident of Selangor — appointing Mr. Samuel to be a Registrar of Marriages under that Enactment. I am also satisfied that Mr. Samuel solemnised this particular marriage in accordance with the provisions of that Enactment. That being so, the question I must now decide is whether this marriage was valid at the time it was solemnised under the authority of the Japanese Authorities and whether it remains valid now that Malaya has returned to the authority of the legitimate Power.

As to this, as Sir Arnold Duncan *McNair* states in his Legal Effects of War, 1944 edition, page 337, it must be admitted that it is not easy to find British judicial authority of the effects of acts of an enemy occupant in British territory, for it is only when British territory is under enemy occupation that these questions are likely to arise in British Courts, and that does not often happen. This statement, of course, is equally applicable to territory under British protection.

But guidance on this particular matter can be obtained in considering the right of postliminium. The right of postliminium is defined in *Hall's* International Law, 8th edition, at page 575 as follows :—

> When territory which has been occupied and population which has been controlled by an enemy comes again into the power of its own state during the progress of war....the legal state of things existing prior to the hostile occupation is re-established.

At page 579 of the same work it is stated :—

> As a general rule the right of postliminium goes no further than to revive the exercise of rights from the moment at which it comes into operation. It does not, except in very few cases, wipe out the effects of acts done by an invader, which for one reason or another it is within his competence to do. Thus judicial acts done under his control, when they are not of a political complexion, administrative acts so done, to the extent that they take effect during the continuance of his control, and the various acts done during the same time by private persons under the sanction of municipal law, remain good. Were it otherwise, the whole social life of a community would be paralysed by an invasion.

Accordingly, since the act of the Japanese Authorities in appointing Mr. Samuel a Marriage Registrar for the State of Selangor was an act which it was within their competence to do and which was done in accordance with the existing law, and since this marriage was solemnised in accordance with the provisions of the Christian Marriage Enactment (Cap. 109), I hold it was valid at the time it was solemnised and also that it still remains valid.

This suit will now proceed having reached the stage at which the marriage between the petitioner and the respondent has been proved.

Marriage held Valid.